

**ENCROACHMENT AGREEMENT
BETWEEN THE CITY OF MILPITAS AND
LSI LOGIC CORPORATION
FOR THE INSTALLATION OF FIBER OPTIC NETWORK FACILITIES
WITHIN PUBLIC RIGHT-OF-WAY**

This Agreement ("Agreement") is dated for identification this 12th day of September, 2005, by and between the CITY OF MILPITAS, a municipal corporation (herein termed "City") and, LSI LOGIC CORPORATION (herein termed "CORPORATION").

RECITALS

A. CORPORATION desires to construct, install and maintain Fiber Optic Network Facilities within the Public Right-of-Way and/or public utility and/or service easements within City; and

B. City has the authority to regulate the terms and conditions for the use of Public Right-of-Way for the construction, installation and maintenance of the Fiber Optic Network Facilities;

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, City and CORPORATION agree as follows:

AGREEMENT

DEFINITIONS

1. "Authorized Routes" shall mean the specific Public Right-of-Way set forth on the map attached as Exhibit A. Exhibit A may be modified during the term of this Agreement with the approval of the City Engineer. The City Engineer's approval must be obtained prior to any construction by CORPORATION in any section of the Public Right-of-Way.

2. "City" means the City of Milpitas, a municipal corporation of the State of California, and includes the duly elected or appointed officers, agents, employees, and volunteers of the City of Milpitas, individually or collectively.

3. "Emergency" is defined as a complete or partial failure or breakage of any portion of the City infrastructure which impacts services. An emergency repair is defined as remedial activity to protect the public health and safety, in the judgment of the City.

4. "Fiber Optic Network Facilities" or "Facilities", means fiber optic cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located by CORPORATION or to be located by CORPORATION in the Public Right-of-Way of City and used solely for the CORPORATION Telecommunications. No portion of "Facilities" shall be used for other purposes without proper City authorization. Unless specifically authorized in a permit issued hereunder, "Facilities" shall not include vaults, pedestals or other enclosures located in the rights-of-way that contain generators, batteries or other back-up power equipment, or that are larger than a standard fiber optic splice box.

5. "Laws" means any order, certificate, judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, or other requirement of any municipality, county, state, federal, or other agency having joint or several jurisdiction over the parties to this Agreement, in effect either at the time of execution of this Agreement or at any time during the location of the Facilities in the Public Right-of-Way including, without limitation, any regulation or order of an official entity or body. A reference

to "Laws" shall include, without limitation, any lawful provision of the Milpitas Municipal Code or any other City ordinance, policy, regulation, or standard specifications.

6. "CORPORATION" shall mean LSI Logic Corporation, and its lawful successors or assigns as permitted by Section 44, hereinafter.

7. "Public Right-of-Way" means the surface, the air space above the surface, and the area below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements as the same now or may hereafter exist that are under the jurisdiction of the City. This term shall not include any property owned by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any person.

8. "City Engineer" means the individual designated as the City Engineer of the City, including any individual expressly designated to exercise functions with respect to the rights and obligations of the City Engineer under this Agreement and any other individual, person, division, department, bureau, or agency of the City as may, from time to time, exercise functions equivalent or similar to those now exercised by the City Engineer.

9. Not used

10. "Telecommunications" shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

11. "Encroachment Permit" shall mean that permit required by Title X, Chapter 10 of the Milpitas Municipal Code.

LIMITATIONS AND RESTRICTIONS

12. Subject to the provisions of this Agreement and all applicable Laws, the City hereby licenses and permits CORPORATION to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove, and replace (hereinafter collectively referred to as "Construct" or "Construction") the Facilities in, under, over, across and along the Public Right-of-Way in the Authorized Routes for the purposes of providing Corporation Telecommunications. Any work performed pursuant to the rights granted to CORPORATION under this Agreement shall be subject to the prior review and reasonable approval of the City Engineer.

13. Except as permitted by applicable Laws or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, CORPORATION shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliners, cable television, and other telecommunications, utility and municipal property without the approval of the owner(s) of the affected property or properties.

14. Both the City and CORPORATION shall expressly comply with all applicable Laws in the exercise and performance of their rights and obligations under this Agreement. Each party preserves all of its rights under all Laws. Corporation may not provide Telecommunications services to any third party.

15. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to use all the Public Right-of-Way in the performance of its duty, including but not limited to, public use as a street and for the purpose of

laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water main, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliers, cable television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across and in said Public Right-of-Way.

16. This Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the Public Right-of-Way, and it is understood that CORPORATION, at its own cost and expense, shall obtain such permission as may be necessary and consistent with any other existing rights.

17. The Construction, installation, operation, maintenance and removal of said Fiber Optic Network Facilities shall be accomplished without cost or expense to City, and shall be performed subject to the reasonable approval of the City Engineer in such a manner as not to endanger personnel or property, or unreasonably obstruct travel on any road, walk or other access thereof within said Public Right-of-Way.

18. In the event of an emergency repair of City facilities in proximity to CORPORATION facilities, which repair may conflict with or threaten CORPORATION facilities, CORPORATION shall immediately, upon notice by City, provide a representative to the repair site. Protective measures, as determined by the CORPORATION representative, at the election of the City, may be undertaken by the City at CORPORATION's expense. Should City not elect to perform such protective action, CORPORATION shall provide the resources to conduct the protective measures upon City's demand under the direction of the City and in a manner consistent, in the City's sole discretion, with the execution of the City's responsibilities in the emergency. Priority shall be given to activities necessary to restore City services and for public safety.

COMPLIANCE WITH STANDARDS

19. Prior to any Construction in Public Right-of-Way, CORPORATION shall obtain an encroachment permit from City. CORPORATION shall Construct Facilities in accordance with Laws.

20. CORPORATION agrees to keep said Fiber Optic Network Facilities in good and safe condition and free from any nuisance, to the reasonable satisfaction of the City Engineer.

21. CORPORATION agrees to cooperate in the planning, locating and constructing of its Fiber Optic Network Facilities in utility joint trenches or common duct banks with other similar utilities and to participate in cost-sharing for the joint trench and ducts, when such joint utility installations are being planned for or exist in an area, provided however, that participation in such joint utility installments shall be on terms and conditions satisfactory to CORPORATION and City.

22. All Fiber Optic Network Facilities shall be underground unless otherwise authorized by the City Engineer.

23. Not Used.

24. Not Used.

25. Not Used.

RESERVATION OF RIGHTS

26. Not Used.

27. City's approval of this Agreement is not a waiver of and is without prejudice to any right City may have under law to regulate, tax or impose fees or charges on CORPORATION in the future.

NO FRANCHISE RIGHTS CREATED

28. Nothing in this Agreement shall be construed as granting or creating any franchise rights.

29. Not Used.

REMOVAL AND RELOCATION

30. CORPORATION shall remove or relocate, without cost or expense to City, any Fiber Optic Network Facilities installed, used and maintained under this Agreement if and when made necessary by any lawful change of grade, alignment or width of any street, including the construction, maintenance or operation of any underground subway or viaduct by City and/or the construction, maintenance or operation of any other City underground or aboveground facilities. In the event all or any portion of said Public Right-of-Way occupied by said Fiber Optic Network Facilities shall be needed by City or in the event the existence of said Fiber Optic Network Facilities shall be considered detrimental to governmental activities, including but not limited to, interference with City construction projects, or is in conflict vertically and/or horizontally with any proposed City installation, CORPORATION shall remove and relocate said Fiber Optic Network Facilities to such other location or locations on said Public Right-of-Way in accordance with conditions and standards as may be designated by City. Said removal or relocation shall be completed within ninety (90) days of notification by City, unless circumstances exist that require a shorter period of time in order to protect the public health, safety, or welfare, in which event, the City shall notify CORPORATION of the shorter time period and the reason wherefore. The City Engineer, at his or her sole discretion, may grant to CORPORATION a longer period of time in which to remove or relocate the Facilities, upon request of CORPORATION. In the event said Fiber Optic Network Facilities are not removed or relocated within ninety (90) days (or other time period if applicable) after said notification, City may cause the same to be done at the sole expense of CORPORATION.

31. In the event of an emergency repair of City facilities in proximity to CORPORATION improvements, which repair may conflict with or threaten CORPORATION improvements, CORPORATION shall immediately, upon notice by City, provide a representative to the repair site. Protective measures, as determined by the CORPORATION's representative, at the election of the City, may be undertaken by the City at CORPORATION's expense. Should City not elect to perform such protective action, CORPORATION shall provide the resources to conduct the protective measures upon City's demand under the direction of the City and in a manner consistent, in the City's sole discretion, with the execution of the City's responsibilities in the emergency. Priority shall be given to activities necessary to restore City services and for public safety. As an alternative to the above procedures, in the event of a pressing emergency to public safety, City may remove the improvements without notification to CORPORATION in order to access City facilities. In the event that either City or Permittee remove the improvements, it shall be CORPORATION's responsibility to obtain all required City permits and approvals for reconstruction and re-installation of the improvements. All costs associated with reconstruction and re-installation of the improvements shall be the responsibility of CORPORATION.

32. If any portions of the Fiber Optic Network Facilities covered under this Agreement are no longer used by CORPORATION, or are abandoned for a period in excess of six (6) months, CORPORATION shall notify City and shall either promptly vacate and remove the facilities at its own expense or, at City's discretion, may abandon some or all of the facilities in place. However, CORPORATION's obligation under this Agreement shall continue in full force and effect unless superseded in a writing signed by both parties.

33. When removal or relocation are required under this Agreement, CORPORATION shall, after the removal or relocation of the Fiber Optic Network Facilities, at its own cost, repair and return the Public Right-of-Way or public utility or service easements on which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City according to its standard practice. Should CORPORATION remove the Fiber Optic Network Facilities from the Public Right-of-Way, CORPORATION shall, within ten (10) days after such removal, give notice thereof to City specifying the Right-of-Way affected and the location thereof as well as the date of removal. Before proceeding with removal or relocation work, CORPORATION shall obtain an encroachment permit from the City.

ENCROACHMENT PERMIT AND FEES

34. CORPORATION shall apply for an encroachment permit for all work and each job within the Public Right-of-Way. CORPORATION shall furnish detailed plans of the work and other such information as required by the City Engineer and shall pay all processing, field marking, engineering and inspection fees, and any other fees that the City may be authorized to impose now or in the future prior to issuance of the permit in accordance with the rates in effect at the time of payment. Said improvements shall be constructed in accordance with Laws, and as further provided for in the provisions of this Agreement. The City may, at its option, require CORPORATION to deposit an amount equal to the reasonable estimate of the City's actual costs of issuing an encroachment permit. CORPORATION shall pay such deposit in the amount specified by the City prior to the issuance of an encroachment permit. City shall be entitled to draw on this deposit on a time and materials basis as reimbursement for the City's actual costs incurred in issuing the encroachment permit. The City shall refund any unused portion of the deposit to CORPORATION upon completion of the work described in the encroachment permit. If, in the event that City reasonably determines that the amount of the deposit remaining will not be sufficient to reimburse the City for its estimated actual costs through completion of the work, City may require CORPORATION to deposit an additional reasonable amount within five (5) days of written notice thereof.

35. Failure to comply with the terms and conditions of this Agreement may, at City's sole discretion, result in withholding issuance of any new encroachment permits, provided, however, that the City must give CORPORATION notice and an opportunity to cure.

DAMAGE TO FACILITIES IN PUBLIC RIGHT-OF-WAY

36. CORPORATION shall be responsible for any damage to Public Right-of-Way due to the Construction performed by CORPORATION in Public Right-of-Way, and CORPORATION shall repair, replace and restore in kind the said damaged facilities in accordance with City standards at CORPORATION's sole expense.

37. If Public Right-of-Way to be used by CORPORATION has preexisting installation(s) placed in the Right-of-Way, CORPORATION shall assume the responsibility to verify the location of the preexisting installation and notify City and any third party of CORPORATION's proposed installation. The cost of any work required of such third party or City to provide adequate space or required clearance to accommodate CORPORATION's installation shall be borne solely by CORPORATION.

RECORDS AND FIELD LOCATIONS

38. CORPORATION shall maintain accurate maps and improvement plans of said Fiber Optic Network Facilities located with the City. CORPORATION shall, within thirty (30) days after completion of an installation in the Public Right-of-Way, and otherwise upon demand of the City Engineer, deliver to the office of the Public Works Department free of charge, and to other third parties interested in performing work within Public Right-of-Way for a reasonable charge upon request, within thirty (30) days after such demand, such maps and plans as may be required to show in detail the exact location of all Fiber Optic

Network Facilities installed within said Public Right-of-Way. In addition, CORPORATION must provide the City with maps and plans on computer diskettes suitable for a Computer Aided Design and Drafting application. City shall use such information only as needed to manage the public right-of-way, including, but not limited to, coordination of construction schedules, prevention of interference among the various utilities and systems in the public right-of-way, and enforcement of building and zoning regulations. The parties acknowledge that the City is subject to the requirements of the California Public Records Act, Government Code section 6250 et seq., and may be required to disclose information provided by CORPORATION to the City upon request of a third party. For information designated by CORPORATION as confidential or proprietary, City shall endeavor to notify CORPORATION of such request prior to disclosure of information designated as confidential or proprietary.

39. CORPORATION shall, at its sole cost and expense, expose by potholing to a depth of 1' below the bottom of its subsurface Fiber Optic Network Facilities, within thirty (30) days of receipt of a written request from City to do so.

40. CORPORATION shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground Fiber Optic Network facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended.

HOLD HARMLESS AND INDEMNIFICATION

41. CORPORATION, jointly and severally, for itself, its successors, agents, contractors and employees, agrees to indemnify, defend (with counsel acceptable to City) and hold harmless City, its officers, employees and agents and any successors to City's interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the "Losses") arising directly or indirectly, in whole or in part, out of the activities of CORPORATION described in this Agreement, except to the extent arising from the City's sole intentional or negligent acts. For purposes of this section only, the term "cleanup actions" shall refer to such actions as are necessary to remediate damage caused directly or indirectly by CORPORATION, its employees, agents, contractors, or subcontractors. In the event that CORPORATION, its employees, agents, contractors, or subcontractors shall discover contamination or hazardous materials while performing any work in the public right-of-way, regardless of the source, CORPORATION shall cause all work to be stopped and shall immediately notify City of the discovery. CORPORATION agrees that the provisions of this section shall fully apply in the event of a failure by CORPORATION to stop work and immediately notify the City.

INSURANCE

42. CORPORATION shall obtain and maintain at all times during the term of this Agreement comprehensive general and automotive liability insurance protecting CORPORATION in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence, including bodily injury and property damage, as a combined single limit or equivalent. Such insurance shall name City, as defined above, as additional insured parties. Coverage shall be in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. When an umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. Such insurance shall not be canceled or materially altered to reduce coverage without giving City at least thirty (30) days advance written notice of such cancellation or change, and it shall be the responsibility of CORPORATION to notify City of such change or cancellation. This insurance shall apply to all encroachment permits issued under this Agreement.

43. CORPORATION shall file the required original Certificate of Insurance with endorsements with City, subject to City's approval, and shall clearly state:

A. Policy number; name of insurance company; name, address and telephone number of agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts.

B. That thirty (30) days cancellation notice is unqualified as to the acceptance of liability for failure to notify City; and

C. That CORPORATION's insurance is primary.

44. Workers Compensation Insurance: CORPORATION shall obtain and maintain at all times during the term of this Agreement statutory Workers Compensation and employer's liability insurance as required by law and furnish City with a certificate showing proof of such coverage.

45. Insurance Companies: Insurance companies must be admitted in California and rated at least A:VII in *Best's Insurance Guide*.

46. Deductible and Self-Insured Retentions and Proof of Insurance: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be stated on Certificates of Insurance, and the Certificate of Insurance must be sent to and approved by City.

PERFORMANCE BOND

47. Prior to the issuance of an encroachment permit, CORPORATION shall provide City with a performance bond naming City as obligee in the amount equal to one hundred percent (100%) of value of the Construction within and affecting the Public Right-of-Way to guarantee and assure the faithful performance of CORPORATION's obligations under this Agreement. City shall have the right to draw against the bond in the event of a default by CORPORATION or in the event that CORPORATION fails to meet and fully perform any of its obligations, only after providing CORPORATION with notice and an opportunity to cure. The form of the bond shall be subject to the reasonable approval of the City Engineer. The bond shall remain in full force until one year after the Construction is completed, inspected and accepted by the City Engineer. This Section shall not be construed to eliminate or reduce CORPORATION's continuing obligation to repair any damage to the public right-of-way resulting from the installation the Facilities.

MISCELLANEOUS

48. Not Used.

49. This Agreement shall not be assignable by CORPORATION without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, that CORPORATION may assign the rights granted hereunder to a parent, successor of CORPORATION, now or hereinafter existing, by only providing notice to City of such assignment.

50. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

SEVERABILITY

51. If any one or more of the covenants or agreement or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

52. Not Used.

TERMINATION

53. This Agreement may be terminated by City upon three (3) months prior written notice to CORPORATION for failure of CORPORATION to fully and promptly cure any default of its obligations hereunder of which the City has notified CORPORATION in writing, or, if such cure cannot be effected within thirty (30) days, that CORPORATION has not commenced and is continuing efforts to cure the default. A failure on the part of any party to perform any material obligation imposed upon such party shall constitute a default and a material breach of this Agreement.

54. CORPORATION or City may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party.

55. City may terminate this Agreement upon thirty (30) days prior written notice to CORPORATION in the event of CORPORATION's insolvency or declaration of bankruptcy.

56. This Agreement shall terminate ten (10) years from the Effective Date unless renewed in writing prior to the termination date.

57. Upon termination, CORPORATION shall remove the Facilities as set forth in the section entitled "Removal and Relocation".

NOTICE

58. CORPORATION's staff must be available to City staff 24 hours a day, 7 days a week, regarding problems or complaints resulting from the facilities installed pursuant to this Agreement and may be contacted by telephone at: (408) 433-8000 regarding such problems or complaints. CORPORATION shall designate a person in California who is authorized to accept service of process on behalf of CORPORATION.

59. All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail or by private delivery systems or by facsimile if followed by United States mail or by private delivery systems as follows:

To City at:

City of Milpitas
City Engineer
455 E. Calaveras Blvd
Milpitas, CA 95035

To CORPORATION at:

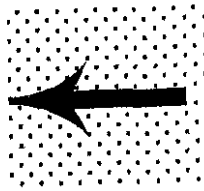
LSI Logic Corporation
Attn: General Counsel
1621 Barber Lane
Milpitas, CA 95035

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the date and year first written herein.

Date: _____

CITY OF MILPITAS



By _____
Charles Lawson, City Manager

Attest:

Mary Lavelle, City Clerk


Approved as to form:

Steven T. Mattas, City Attorney

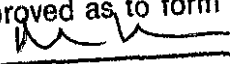
Recommended by:

Greg Armendariz, City Engineer

CORPORATION:


By: David G. Pursel,
V.P., General Counsel, and Corp. Secretary

(Notary Public)

LSI Logic Legal Department
Date 9-15-05
Approved as to form
By 

(05-1835)

ALL PURPOSE ACKNOWLEDGMENT

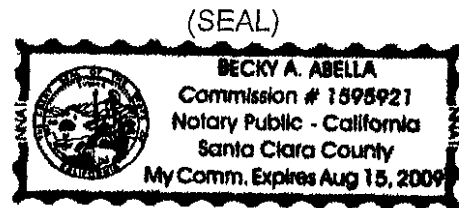
State of California)
County of Santa Clara) s.s.

On September 13, 2005, before me, Becky A. Abella Notary Public, personally appeared David G. Pursel

☒ personally known to me;
~~or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)~~
~~(is/are)~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Becky A. Abella
Signature of Notary Public



CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☒ Individual(s)
☐ Corporate Officer(s) Titles VP, General Counsel and Corp. Secretary
☐ Partner(s) Limited General
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other : _____

Signer is representing: LSI Logic Corporation

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document Encroachment Agreement between the City of Milpitas and LSI Logic Corp. for the Installation of Fiber Optic Network facilities
Number of pages: 10 Date of document: 9/12/05
Signer(s) other than named above: City Clerk, City Manager, City Attorney and City Engineer

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

Standard Form Agreement
September 12, 2005